

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

HEARTBRAND BEEF, INC.

Plaintiff,

vs.

LOBEL'S OF NEW YORK, LLC,
WORLDWIDE MEDIA, INC. THOUGHT
CONVERGENCE, INC. and YAHOO! INC.
Defendants.

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Civil Action No. 6:08-cv-00062

JOINT MOTION TO DISMISS
DEFENDANT, LOBEL'S OF NEW YORK, LLC WITH PREJUDICE

Plaintiff, Heartbrand Beef, Inc. ("Heartbrand") and Defendant, Lobel's of New York, LLC ("Lobel's") hereby file this "Joint Motion to Dismiss Defendant, Lobel's of New York, LLC With Prejudice", and jointly state the following:

1. Heartbrand and Lobel's have resolved the differences and disputes between them with regard to the above-referenced and numbered cause.

2. To memorialize the resolution of such differences, Heartbrand and Lobel's have entered into a Confidential Settlement Agreement. That Agreement not only settles the disputes and differences between Heartbrand and Lobel's, but also Lobel's subsidiary, Lobel's of New York, LLC, a Delaware Limited Liability Company ("Lobel's – Delaware").

3. Pursuant to the Confidential Settlement Agreement, Lobel's and Heartbrand hereby move the Court to dismiss Lobel's from the above-identified lawsuit with prejudice.

4. Currently pending before the Court is Heartbrand's Motion for Leave to File Second Amended Complaint (Docket No. 38). In that Motion, Heartbrand moves the Court to file a Second Amended Complaint, which added Lobel's – Delaware as a party to the above-identified lawsuit. Because Heartbrand has settled its differences with Lobel's and Lobel's –

Delaware, Heartbrand's Motion for Leave to File Second Amended Complaint should be denied as moot simultaneously with dismissal of Lobel's with prejudice.

5. Currently pending before the Court is Lobel's Motion to Dismiss Under FRCP Rule 12(B) (Docket No. 31). In that Motion, Lobel's moves the Court to dismiss the Complaint with respect to Lobel's for lack of personal jurisdiction, improper venue, and failure to join a required party. Because Lobel's has settled its differences with Heartbrand, Lobel's Motion to Dismiss Under FRCP Rule 12(B) should be denied as moot simultaneously with dismissal of Lobel's with prejudice.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Heartbrand Beef, Inc. and Defendant, Lobel's of New York, LLC pray that this Court dismiss Lobel's of New York, LLC from this lawsuit with prejudice.

Respectfully submitted,

By: /s/ Ted D. Lee
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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_____/s/ Ted D. Lee